

EXHIBIT “1”

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Clerk of Court
Superior Court of CA,
County of Santa Clara
21CV389465
Reviewed By: A. Villanueva

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5 Plaintiff

6 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
7 **COUNTY OF SANTA CLARA**
8 **SAN JOSE, CALIFORNIA**

9 Naren Chaganti,) Case No. : 21CV389465
10 Plaintiff,)
11 vs.) COMPLAINT FOR BREACH OF
12 Fifth Third Bank and Edward F.) CONTRACT, NEGLIGENCE, BREACH OF
13 "Ted" Luby,) UNIFORM FIDUCIARIES LAW, FRAUD
14 and Does 1-5.) IN THE INDUCEMENT, LEGAL
15 Defendants) MALPRACTICE, CONSPIRACY TO
) COMMIT INJURY
) JURY TRIAL REQUESTED
)

16
17 COMES NOW, Plaintiff, and complains against Defendants Fifth
18 Third Bank and Edward F. "Ted" Luby, and Does 1-5 as follows.

19 1. At all times relevant herein, Plaintiff is and has been a
20 resident of California.

21 2. Defendant Fifth Third Bank (hereafter, "bank") is a
22 Cincinnati, Ohio bank which is registered with California as Fifth
23 Third Bank N.A. and conducts business throughout California.

24 3. Edward "Ted" Luby (hereafter, "Luby") is a lawyer in Missouri
25 who represented Plaintiff in a dispute with Fifth Third Bank.

26 4. Defendants named as "Does 1-5" are believed to be individuals
27 including attorneys or agents of Fifth Third Bank whose identities
28 and/or roles are not known at the time the complaint is filed, and



1 therefore these entities are given fictitious names. Plaintiff will
2 substitute the real names and describe the role of these
3 fictitiously named defendants in an amendment the Complaint after
4 such facts are discovered by Plaintiff.

5 5. In October 2008, Fifth Third Bank opened two business trust
6 accounts for Whispering Oaks RCF Management Co Inc ("Whispering
7 Oaks"), a business, in suburban St Louis.

8 6. The purpose of the trust accounts was to hold funds for
9 others who were under the care of Whispering Oaks operated a
10 business in Wildwood, Missouri. The funds were regulated by state
11 and federal laws and were to be used only for the purposes of the
12 trust beneficiaries.

13 7. The first one of these accounts had Naren Chaganti, President
14 of Whispering Oaks, and Amanda Palazzolo, his secretary as signors
15 ("the first account").

16 8. The second account had only Naren Chaganti as permitted
17 signor ("the second account").

18 9. Naren Chaganti gave instructions to the bank that the first
19 account should have controls on the account as to withdrawals, and
20 in view of theft of funds that occurred or suspected in the past at
21 a different bank, the funds handled by Amanda Palazzolo should be
22 monitored carefully and she should not have access to without
23 telephone authorization by Naren Chaganti.

24 10. The bank was not only orally instructed to follow these
25 instructions but the bank in fact entered the instructions in its
26 computers. Every teller and manager of the bank knew these
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1 instructions, and was personally familiar with both Amanda Palazzolo
2 and Naren Chaganti.

3 11. Between January 2010 and July 2010, Amanda Palazzolo went to
4 a different branch of the Fifth Third Bank, the Valley Park branch,
5 and withdrew \$9000 without authorization, which withdrawal was
6 facilitated as a result of the bank's utter failure to follow the
7 instructions given to it as well as its own internal safeguards.

8 12. This information did not come to light until about the end of
9 July 2010, by which time the funds were depleted from all accounts.

10 13. Though Plaintiff notified the bank within hours of discovery
11 of the improper withdrawals, Fifth Third Bank failed to conduct
12 timely and proper investigation.

13 14. Fifth Third Bank gave false assurances to Plaintiff that it
14 was in fact investigating the incident, and that Plaintiff should
15 wait to be informed of the result of its investigation.

16 15. For more than two years Fifth Third Bank gave Plaintiff the
17 run-around and stated that it still was investigating in
18 consultation with officials in its headquarters, asking Plaintiff to
19 be patient.

20 16. Fifth Third Bank also failed to file a claim with its
21 insurance company to cover Plaintiff's losses.

22 17. In particular, the bank was aware that Amanda Palazzolo was a
23 fiduciary of Plaintiff.

24 18. The bank facilitated withdrawal of trust funds for personal
25 use by Amanda Palazzolo.

26 19. The bank benefited from the withdrawals by Amanda Palazzolo
27 in part by charging a fee for each of the withdrawals.

1 20. In view of the instructions given to the bank at the time the
2 two trust fund accounts were opened, the bank was with actual
3 knowledge that Amanda Palazzolo was not authorized to use the trust
4 funds for her own purposes.

5 21. The bank acted in bad faith in facilitating withdrawals by
6 Amanda Palazzolo in her capacity as a fiduciary.

7 22. Amanda Palazzolo breached her duty as a fiduciary of
8 Plaintiff when she withdrew funds from the trust funds for her own
9 use.

10 23. Because the funds were misappropriated, Naren Chaganti
11 President of Whispering Oaks, paid the funds, and in return,
12 obtained an assignment of the right to sue.

13 **FIRST CAUSE OF ACTION**

14 **AGAINST FIFTH THIRD BANK**

15 **(BREACH OF CONTRACT)**

16 24. Plaintiff incorporates by reference all allegations in
17 Paragraphs 1-23.

18 25. Fifth Third Bank is in breach of contract with Whispering
19 Oaks, which breach resulted in damage to Plaintiff via Whispering
20 Oaks.

21 26. Plaintiff therefore seeks relief.

22 WHEREFORE, PREMISES STATED, Plaintiff respectfully petitions
23 the Court to grant judgment against Fifth Third Bank such amounts
24 in compensatory damages, attorney's fees and costs of suit to the
25 fullest extent as is permitted by law and as proven at trial,
26 including pre-judgment and post-judgment interest at the lawful
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1 rate on said amounts. The Court is requested to grant such other
2 and further relief as is proper and just.

3 **SECOND CAUSE OF ACTION**

4 **AGAINST FIFTH THIRD BANK**

5 **(NEGLIGENCE)**

6
7 27. Plaintiff incorporates by reference all allegations in
8 Paragraphs 1-23 above.

9 28. Fifth Third Bank's failure to follow instructions and its
10 internal safeguards was the bank's breach of its duty to Whispering
11 Oaks as a customer of the bank, which breach resulted in damage to
12 Plaintiff via Whispering Oaks.

13 29. Plaintiff therefore seeks relief.

14 WHEREFORE, PREMISES STATED, Plaintiff respectfully petitions
15 the Court to grant judgment against Fifth Third Bank such amounts
16 in compensatory damages, punitive damages, attorney's fees and
17 costs of suit to the fullest extent as is permitted by law and as
18 proven at trial, including pre-judgment and post-judgment interest
19 at the lawful rate on said amounts. The Court is requested to grant
20 such other and further relief as is proper and just.

21 **THIRD CAUSE OF ACTION**

22 **AGAINST FIFTH THIRD BANK**

23 **(BREACH OF UNIFORM FIDUCIARIES LAW - CONVERSION)**

24
25 30. Plaintiff incorporates by reference all allegations in
26 Paragraphs 1-23 above.

27 31. Fifth Third Bank was fully aware that the funds held in the
28 accounts were trust funds, and that Amanda Palazzolo was not a

1 beneficiary of the trust, nor did she have authority to use the
2 funds for her own purposes.

3 32. Fifth Third Bank's failure to follow instructions and its
4 internal safeguards was the bank's breach of its duty to Whispering
5 Oaks as a customer of the bank under one or more sections of the
6 Uniform Fiduciaries Law (UFL) for permitting Amanda Palazzolo to
7 withdraw funds from the bank and causing loss to plaintiff.

8 33. The bank is therefore liable to Plaintiff via assignment from
9 Whispering Oaks.

10 WHEREFORE, PREMISES STATED, Plaintiff respectfully petitions
11 the Court to grant judgment against Fifth Third Bank such amounts
12 in compensatory damages, punitive damages, attorney's fees and
13 costs of suit to the fullest extent as is permitted by law and as
14 proven at trial, including pre-judgment and post-judgment interest
15 at the lawful rate on said amounts. The Court is requested to grant
16 such other and further relief as is proper and just.

17
18 **FOURTH CAUSE OF ACTION**

19 **AGAINST FIFTH THIRD BANK**

20 **(PROMISSORY FRAUD)**

21 34. Plaintiff incorporates by reference all allegations in
22 Paragraphs 1-23 above.

23 35. Fifth Third Bank, through its officers and managing agents,
24 in particular April Ivey, who took instructions from Plaintiff,
25 promised to follow Plaintiff's instructions with intent to induce
26 reliance on Plaintiff's part and to obtain Plaintiff's commercial
27 banking business.
28

1 36. At the time it promised to follow Plaintiff's instructions in
2 order to secure Plaintiff's business, Fifth Third Bank had no
3 intention of ever complying with the instructions Plaintiff gave to
4 the bank.

5 37. At the time Fifth Third Bank promised to follow Plaintiff's
6 instructions and at the time the accounts were opened in reliance
7 thereof, Plaintiff was unaware that Fifth Third Bank had no
8 intention of following Plaintiff's instructions.

9 38. But for Fifth Third Bank's promise to follow Plaintiff's
10 instructions Plaintiff would not have entrusted the funds to the
11 bank nor would Plaintiff have opened the two accounts with the bank.

12 39. Plaintiff would not have been able to, in the exercise of due
13 diligence, find out that Fifth Third Bank's promises—that it would
14 follow Plaintiff's instructions—were false or were made with no
15 intention of complying with them.

16 40. Plaintiff reasonably relied on Fifth Third Bank's promises to
17 follow its instructions.

18 41. Under the circumstances, Plaintiff's reliance on Fifth Third
19 Bank's promises to Plaintiff—that it would follow Plaintiff's
20 instructions to safeguard Plaintiff's funds—was both reasonable and
21 justified.

22 42. Fifth Third Bank never instructed its employees to follow
23 Plaintiff's instructions.

24 43. Fifth Third Bank did not impose adequate control mechanisms
25 on Plaintiff's accounts to prevent unauthorized access of the funds
26 therein.
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1 44. Fifth Third Bank also failed to maintain complete and
2 adequate records of the various transactions of Plaintiff with the
3 bank.

4 45. As a direct and immediate consequence of the false promises
5 by the bank, Plaintiff was damaged.

6 46. Plaintiff therefore seeks relief.

7 WHEREFORE, PREMISES STATED, Plaintiff respectfully petitions
8 the Court to grant judgment against Fifth Third Bank such amounts
9 in compensatory damages, punitive damages, attorney's fees and
10 costs of suit to the fullest extent as is permitted by law and as
11 proven at trial, including pre-judgment and post-judgment interest
12 at the lawful rate on said amounts. The Court is requested to grant
13 such other and further relief as is proper and just.
14

15 **FIFTH CAUSE OF ACTION**

16 **AGAINST EDWARD F. "TED" LUBY**

17 **(LEGAL MALPRACTICE)**

18 47. Plaintiff incorporates by reference all allegations in
19 Paragraphs 1-23 above.

20 48. In 2015, a suit for damages was filed against Fifth Third
21 Bank in St Louis County Circuit Court.

22 49. In April 2019, by way of a written agreement and payment of
23 retainer, Plaintiff hired Edward "Ted" Luby to be substituted as
24 counsel for Plaintiff.

25 50. Ted Luby assured Plaintiff that he was qualified to represent
26 Plaintiff, and that he would faithfully perform competent services
27 as attorney for Plaintiff.
28

1 51. However, Ted Luby did not familiarize himself with the facts
2 and the applicable law, and in May 2020, during the pandemic-imposed
3 lockdown, wrote to Plaintiff that he withdrew from the case, though
4 at the time a summary judgment motion was pending.

5 52. Unknown at the time, but what became apparent later was that
6 Ted Luby secretly connived with the Defendant and its attorneys in
7 order to sabotage a valid suit by obstructing Plaintiff from
8 continuing to prosecute the suit.

9 53. Ted Luby failed to perform his services as a competent
10 attorney, withdrew abruptly, filed false papers with the court of
11 his true reasons to withdraw, and failed to preserve Plaintiff's
12 ability to defend itself.

13 54. As a result, a judgment without notice or hearing was entered
14 against Plaintiff, granting summary judgment to Defendant. But
15 because the judgment was without notice or opportunity for Plaintiff
16 to respond to, it is void and cannot act as a bar against this suit.

17 55. Plaintiff's numerous inquiries about the status of the case
18 went unanswered.

19 56. It turns out that other than his entry of appearance, a
20 document Plaintiff prepared for him, his only filing in the case was
21 the motion to withdraw.

22 57. Ted Luby did not even purchase a deposition transcript which
23 was required to respond to the summary judgment motion.

24 58. Ted Luby did not know the elements of the causes of action,
25 nor did he know how to respond to a summary judgment motion.

26 59. These acts and omissions of Ted Luby damaged Plaintiff.
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1 WHEREFORE, PREMISES STATED, Plaintiff respectfully petitions
2 the Court to grant judgment against Ted Luby such amounts in
3 compensatory damages, punitive damages, attorney's fees and costs
4 of suit to the fullest extent as is permitted by law and as proven
5 at trial, including pre-judgment and post-judgment interest at the
6 lawful rate on said amounts. The Court is requested to grant such
7 other and further relief as is proper and just.
8

9 **SIXTH CAUSE OF ACTION**

10 **AGAINST EDWARD F. "TED" LUBY**

11 **(FRAUD AND DECEIT)**

12 60. Plaintiff incorporates by reference all allegations in
13 Paragraphs 1-22, and 48-59 above.

14 61. At the time Ted Luby agreed to represent Plaintiff in the St
15 Louis County case against Fifth Third Bank, Ted Luby did not
16 disclose to Plaintiff that he was not qualified or experienced to
17 represent Plaintiff in the suit against Fifth Third Bank, or his
18 true intent to sabotage Plaintiff's case, or his prior relationship
19 with Defendant's attorneys.

20 62. Not knowing of his true abilities, qualifications, experience
21 or his secret intent to sabotage Plaintiff's case, or his prior
22 relationship with Defendant's attorney, Plaintiff hired Ted Luby to
23 prosecute the case against Fifth Third Bank.

24 63. As stated, Ted Luby is thoroughly unprepared and unqualified
25 to litigate a civil case of this type. Nevertheless, he gave false
26 assurances that he would competently prosecute the case against
27 Fifth Third Bank.
28

1 64. Had Plaintiff been aware of Ted Luby's lack of competence,
2 lack of loyalty, lack of good faith, relationship with Defendant's
3 attorneys or his secret intention to sabotage Plaintiff's case,
4 Plaintiff would never have hired him.

5 65. Under the circumstances, Plaintiff's hiring of Ted Luby to
6 prosecute the suit against Fifth Third Bank was reasonable and
7 justified.

8 66. As a direct and proximate result of the omissions,
9 concealment, false representations, and secret intention of Ted Luby
10 to sabotage Plaintiff's suit, Plaintiff was damaged.

11 WHEREFORE, PREMISES STATED, Plaintiff respectfully petitions
12 the Court to grant judgment against Ted Luby such amounts in
13 compensatory damages, punitive damages, attorney's fees and costs
14 of suit to the fullest extent as is permitted by law and as proven
15 at trial, including pre-judgment and post-judgment interest at the
16 lawful rate on said amounts. The Court is requested to grant such
17 other and further relief as is proper and just.

18
19 **SEVENTH CAUSE OF ACTION**

20 **AGAINST FIFTH THIRD BANK AND EDWARD F. "TED" LUBY**

21 **(CONSPIRACY TO COMMIT INJURY)**

22 67. Plaintiff incorporates by reference all allegations in
23 Paragraphs 1-22, and 48-59 above.

24 68. On information and belief, Ted Luby secretly agreed with
25 Fifth Third Bank and/or its attorneys or agents to not oppose the
26 summary judgment motion after it was filed.

1 69. In accordance with the common plan or scheme to sabotage
2 Plaintiff's case, Ted Luby and Fifth Third Bank agreed that Ted Luby
3 would not work on responding to the bank's summary judgment motion,
4 and instead withdrew from the case so that Plaintiff would be left
5 with no representation.

6 70. At this time it is unclear if the attorneys or other agents
7 working for Fifth Third Bank were personally involved or whether
8 they merely acted as agents of the bank when they agreed with Ted
9 Luby to sabotage Plaintiff's case. If and when it becomes clear
10 that attorneys representing the bank were personally involved in
11 this conspiracy, Plaintiff will seek leave of Court to add them as
12 defendants in this case.

13 71. Ted Luby did not seek a long-enough extension of time from
14 the court or the bank to allow Plaintiff to file alternative
15 counsel. Instead, Ted Luby, by sending a letter to Plaintiff's
16 address in Sunnyvale, California, via regular mail, appeared ex
17 parte in the court, made false representations, did not explain to
18 the judge that Plaintiff was unable to travel due to the pandemic-
19 induced locked down while overseas at the time, and obtained an
20 order permitting his withdrawal.

21 72. As a direct and proximate result of the secret agreement and
22 connivance of the bank and Ted Luby to sabotage Plaintiff's case,
23 Plaintiff was damaged.
24

25 WHEREFORE, PREMISES STATED, Plaintiff respectfully petitions
26 the Court to grant judgment against Fifth Third Bank and Ted Luby,
27 jointly and severally, such amounts in compensatory damages,
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1 punitive damages, attorney's fees and costs of suit to the fullest
2 extent as is permitted by law and as proven at trial, including
3 pre-judgment and post-judgment interest at the lawful rate on said
4 amounts. The Court is requested to grant such other and further
5 relief as is proper and just.

6
7 **EIGHTH CAUSE OF ACTION**
8 **AGAINST FIFTH THIRD BANK**
9 **(AIDING AND ABETTING)**

10 73. Plaintiff incorporates by reference all allegations in
11 Paragraphs 1-22, 48-59, and 68-71 above.

12 74. Ted Luby's actions constitute breach of fiduciary duty to
13 Plaintiff.

14 75. Fifth Third Bank intended to and actively in fact aided and
15 abetted the breach of fiduciary duty by Ted Luby, by, among other
16 things.

17 76. As a direct and proximate result of the secret agreement and
18 connivance of the bank and Ted Luby to sabotage Plaintiff's case,
19 Plaintiff was damaged.

20 WHEREFORE, PREMISES STATED, Plaintiff respectfully petitions
21 the Court to grant judgment against Fifth Third Bank, such amounts
22 in compensatory damages, punitive damages, attorney's fees and
23 costs of suit to the fullest extent as is permitted by law and as
24 proven at trial, including pre-judgment and post-judgment interest
25 at the lawful rate on said amounts. The Court is requested to grant
26 such other and further relief as is proper and just.

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REQUEST FOR JURY TRIAL

77. Plaintiff requests trial by jury on all issues so triable.

Respectfully submitted,



Naren Chaganti, SBN 209347
Plaintiff